

AUG. 31. 2006 2:02PM
TO: USPTO

ZILKA-KOTAB, PC

ZILKA-KOTAB

PC
ZILKA, KOTAB & FEECE™

100 PARK CENTER PLAZA, SUITE 300
SAN JOSE, CA 95113

TELEPHONE (408) 971-2573
FAX (408) 971-4660

NO. 4026 P. 1
RECEIVED
CENTRAL FAX CENTER

AUG 31 2006

FAX COVER SHEET

Date: August 31, 2006	Phone Number	Fax Number
To: USPTO Board of Patent Appeals	(571) 273-8300	
From: Kevin J. Zilka		

Docket No.: ABE1P001

App. No: 10/644,949

Total Number of Pages Being Transmitted, Including Cover Sheet: 37

Message:

Please deliver to the Board of Patent Appeals.

Thank you,

Kevin J. Zilka

☐ Original to follow Via Regular Mail ☒ Original will Not be Sent ☐ Original will follow Via Overnight Courier

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copy of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone (if long distance, please call collect) and return the original message to us at the above address via the U.S. Postal Service. Thank you.

IF YOU DO NOT RECEIVE ALL PAGES OR IF YOU ENCOUNTER
ANY OTHER DIFFICULTY, PLEASE PHONE Erica
AT (408) 971-2573 AT YOUR EARLIEST CONVENIENCE

August 31, 2006

AUG 31 2006

Practitioner's Docket No. ABE1P001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: John R. Abe

Application No.: 10/644,949

Group No.: 3639

Filed: 08/19/2003

Examiner: Woo, R.

For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR THE OPTIMIZATION OF PRICES TO SATISFY CERTAIN BUSINESS OBJECTIVES

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION-37 C.F.R. § 41.37)

1. This brief is in furtherance of the Notice of Appeal filed 08/31/2005, a substitute for the Appeal Brief filed 01/12/2006, and in response to the Notification of Non-Compliant Appeal Brief mailed on 08/07/2006

2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

with sufficient postage as first class mail.

37 C.F.R. § 1.10*

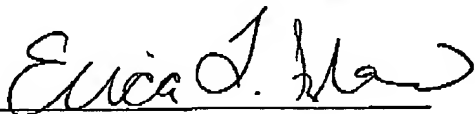
as "Express Mail Post Office to Addressee"

Mailing Label No. (mandatory)

TRANSMISSION

✓ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.

Date: 8/31/06


Signature

Erica L. Farlow

(type or print name of person certifying)

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. §1.17(c), the fee for filing the Appeal Brief has already been paid. However, the Commissioner is authorized to charge any fees that may be due to deposit account 50-1351 (ABE1P001).

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$0.00 (previously paid on October 26, 2005)
Total Fee Due \$0.00

6. FEE PAYMENT

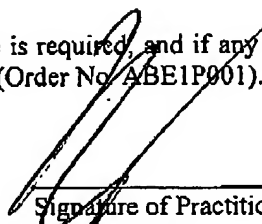
Applicant believes that only the above fees are due in connection with the filing of this paper because the appeal brief fee was paid with a previous submission. However, the Commissioner is authorized to charge any additional fees that may be due (e.g. for any reason including, but not limited to fee changes, etc.) to deposit account 50-1351 (Order No. ABE1P001).

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. ABE1P001).

Reg. No.: 41,429
Tel. No.: 408-971-2573
Customer No.: 28875



Signature of Practitioner
Kevin J. Zilka
Zilka-Kotab, PC
P.O. Box 721120
San Jose, CA 95172-1120
USA

Transmittal of Appeal Brief—page 2 of 2



Practitioner's Docket No. ABE1P001

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

RECEIVED
CENTRAL FAX CENTER

In re application of: John R. Abe

AUG 31 2006

Application No.: 10/644,949

Group No.: 3639

Filed: 08/19/2003

Examiner: Woo, R.

For: SYSTEM, METHOD AND COMPUTER PROGRAM PRODUCT FOR THE OPTIMIZATION OF
PRICES TO SATISFY CERTAIN BUSINESS OBJECTIVESMail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450TRANSMITTAL OF APPEAL BRIEF
(PATENT APPLICATION--37 C.F.R. § 41.37)

1. This brief is in furtherance of the Notice of Appeal filed 08/31/2005, a substitute for the Appeal Brief filed 01/12/2006, and in response to the Notification of Non-Compliant Appeal Brief mailed on 08/07/2006

2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

*(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)*

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☐ deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

☐ with sufficient postage as first class mail.

37 C.F.R. § 1.10*

☐ as "Express Mail Post Office to Addressee"

Mailing Label No. _____ (mandatory)

TRANSMISSION

☒ facsimile transmitted to the Patent and Trademark Office, (571) 273-8300.Date: 8/31/06
Signature

Erica L. Farlow

(type or print name of person certifying)

* Only the date of filing (* 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under * 1.8 continues to be taken into account in determining timeliness. See * 1.703(f). Consider "Express Mail Post Office to Addressee" (* 1.10) or facsimile transmission (* 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Transmittal of Appeal Brief--page 1 of 2

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. §1.17(c), the fee for filing the Appeal Brief has already been paid. However, the Commissioner is authorized to charge any fees that may be due to deposit account 50-1351 (ABE1P001).

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. § 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$0.00 (previously paid on October 26, 2005)
Total Fee Due \$0.00

6. FEE PAYMENT

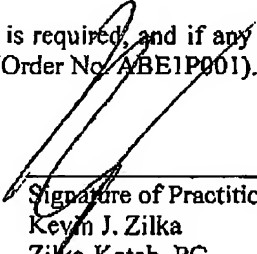
Applicant believes that only the above fees are due in connection with the filing of this paper because the appeal brief fee was paid with a previous submission. However, the Commissioner is authorized to charge any additional fees that may be due (e.g. for any reason including, but not limited to fee changes, etc.) to deposit account 50-1351 (Order No. ABE1P001).

A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, and if any additional fee for claims is required, charge Deposit Account No. 50-1351 (Order No. ABE1P001).

Reg. No.: 41,429
Tel. No.: 408-971-2573
Customer No.: 28875



Signature of Practitioner
Keyin J. Zilka
Zilka-Kotab, PC
P.O. Box 721120
San Jose, CA 95172-1120
USA

Transmittal of Appeal Brief—page 2 of 2

- 1 -

RECEIVED
CENTRAL FAX CENTER

AUG 31 2006

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)	
)	
John R. Abe)	Group Art Unit: 3639
)	
Application No. 10/644,949)	Examiner: Dixon, Thomas
)	
Filed: 08/19/2003)	Date: 08/31/2006
)	
For: SYSTEM, METHOD AND COMPUTER)	
PROGRAM PRODUCT FOR THE)	
OPTIMIZATION OF PRICES TO SATISFY)	
<u>CERTAIN BUSINESS OBJECTIVES</u>)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

SUBSTITUTE APPEAL BRIEF (37 C.F.R. § 41.37)

This brief is in furtherance of the Notice of Appeal filed 08/31/2005, a substitute for the Appeal Brief filed 01/12/2006, and in response to the Notification of Non-Compliant Appeal Brief mailed on 08/07/2006 (see attached). While appellant disagrees with the Examiner as to whether the alleged deficiencies exist in the original Appeal Brief, a Substitute Appeal Brief with appropriate edits is nevertheless submitted to expedite prosecution.

The fees required under § 1.17, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)(i)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
- III STATUS OF CLAIMS

- 2 -

- IV STATUS OF AMENDMENTS
- V SUMMARY OF CLAIMED SUBJECT MATTER
- VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL
- VII ARGUMENT
- VIII CLAIMS APPENDIX
- IX EVIDENCE APPENDIX
- X RELATED PROCEEDING APPENDIX

The final page of this brief bears the practitioner's signature.

- 3 -

I REAL PARTY IN INTEREST (37 C.F.R. § 41.37(c)(1)(i))

The real party in interest in this appeal is John R. Abe.

- 4 -

II RELATED APPEALS AND INTERFERENCES (37 C.F.R. § 41.37(c) (1)(ii))

With respect to other prior or pending appeals, interferences, or related judicial proceedings that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, an appeal noted on August 24, 2005 in application serial number 10/644,944 and an appeal noted on October 25, 2005 in application serial number 10/652,640 may be, but are not necessarily, related.

Since no decision(s) has been rendered in such proceeding(s), no material is included in the Related Proceedings Appendix appended hereto.

- 5 -

III STATUS OF CLAIMS (37 C.F.R. § 41.37(c) (1)(iii))

A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-8, 13-15, 17 and 19-36

B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims withdrawn from consideration: None
2. Claims pending: 1-8, 13-15, 17 and 19-36
3. Claims allowed: None
4. Claims rejected: 1-8, 13-15, 17 and 19-36
5. Claims cancelled: 9-12, 16, and 18

C. CLAIMS ON APPEAL

The claims on appeal are: 1-8, 13-15, 17 and 19-36

See additional status information in the Appendix of Claims.

- 6 -

IV STATUS OF AMENDMENTS (37 C.F.R. § 41.37(c)(1)(iv))

As to the status of any amendment filed subsequent to final rejection, there are no such amendments after final.

- 7 -

V SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. § 41.37(c)(1)(v))

With respect to a summary of Claims 1, and 19, as shown in Figures 1-13, a method, and computer program product are provided for determining an optimal price. In use, a plurality of prices associated with a price-frequency mathematical distribution of competitor prices (e.g. see items 202-208 of Figure 2) and a number of competitors (e.g. see item 210 of Figure 2) are received. See, for example, page 9, lines 10-28 et al. In addition, a business objective is also received which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the input device of the computer system (e.g. see item 216 of Figure 2). See, for example, page 1, lines 9-14, and page 3, lines 14-17 et al. Still yet, a cost associated with a good or service is received (e.g. see item 218 of Figure 2). See, for example, page 10, lines 15-19 et al. An optimal price is then calculated based on the prices, number of competitors, business objective, and cost associated with a good or service (e.g. see item 222 of Figure 2) and the optimal price for performing the business objective is output (e.g. see Figure 9, Figure 10, and Figure 11). See, for example, page 15, line 7 – page 17, line 14 et al.

With respect to a summary of Claim 20, as shown in Figures 1-13, a system is provided for determining an optimal price. In use, a plurality of prices associated with a price-frequency mathematical distribution of competitor prices (e.g. see items 202-208 of Figure 2) and a number of competitors (e.g. see item 210 of Figure 2) are received. See, for example, page 9, lines 10-28 et al. In addition, a business objective is also received which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the input device of the computer system (e.g. see item 216 of Figure 2). See, for example, page 1, lines 9-14, and page 3, lines 14-17 et al. Still yet, a cost associated with a good or service is received (e.g. see item 218 of Figure 2). See, for example, page 10, lines 15-19 et al. In addition, a processor (e.g. see item 112 of Figure 1A) including a plurality of engines

- 8 -

(e.g. see items 118, 120, and 122 of Figure 1A) is coupled to the input device (e.g. see item 130 of Figure 1B). See, for example, page 8, line 12 – page 9, line 17 et al. The engines of the processor are adapted for calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service. See, for example, page 9, lines 5-17 et al. Also, a display device (e.g. see item 100, and item 102 of Figure 1A) is coupled to the processor for displaying the optimal price for performing the business objective. See, for example, page 8, lines 12-25 et al.

- 9 -

**VI GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. §
41.37(c)(1)(vi))**

Following, under each issue listed, is a concise statement setting forth the corresponding ground of rejection.

Issue # 1: The Examiner has rejected Claims 1-8, 13-15, 17 and 19-36 under 35 U.S.C. 102(b) as being anticipated by Phillips et al. (U.S. Patent Application Publication No. 2002/0116348).

- 10 -

VII ARGUMENT (37 C.F.R. § 41.37(c)(1)(vii))

The claims of the groups noted below do not stand or fall together. In the present section, appellant explains why the claims of each group are believed to be separately patentable.

Issue # 1:

The Examiner has rejected Claims 1-8, 13-15, 17 and 19-36 under 35 U.S.C. 102(b) a being anticipated by Phillips et al. (U.S. Patent Application Publication No. 2002/0116348).

Group #1: Claims 1, 19, 20 and 36

The Examiner has relied on Figures 1-3, 6-7, paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed "receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices" (see the same or similar, but not identical language in each of the independent claims).

Appellant respectfully asserts that there is no disclosure in Phillips that meets appellant's specific claim language. For example, Phillips completely fails to even mention any sort of competitor prices.

Specifically, FIG. 1 makes no disclosure of "receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices" as claimed by appellant (see the same or similar, but not identical language in each of the independent claims). In addition, FIG. 2 from Phillips only identifies a Transaction Database [120], a Normalized Sales Forecaster [130], and a Price Sensitivity Model [140], all of which refer to capturing historical sales, normalizing historical sales for the purposes of forecasting, and predicting sales based on historical transactions. Clearly such teachings fail to meet appellant's specific claim language since they completely fail to even suggest "a plurality of prices associated with a price-frequency mathematical distribution of competitor prices." Furthermore, FIG. 3, titled Historical Line Items, shows a sales history that includes price and quantity sold, which further amplifies appellant's assertion that Phillips does not utilize a price-frequency mathematical distribution of

- 11 -

competitor prices in any manner. Regarding FIGS. 6 and 7, appellant finds no reference or terms directly or indirectly inferring the use of a price-frequency distribution of competitor prices.

Additionally, appellant notes that there is no disclosure in Phillips of "receiving a number of competitors" as claimed by appellant (see the same or similar, but not identical language in each of the independent claims). The Examiner has again relied on Figures 1-3, 6-7, paragraphs [0013]-[0014] and [0018] to meet such claim language. As noted above, appellant respectfully asserts that such Figures and associated descriptions relied on by the Examiner merely relate to capturing historical sales, normalizing historical sales for the purposes of forecasting, and predicting sales based on historical transactions (Figure 2) and a sales history that includes price and quantity sold (Figure 3). Again, with respect to the remaining figures relied on by the Examiner, appellant has not found any disclosure of "a number of competitors."

Only appellant teaches and claims such competitor-specific information, namely "a number of competitors" and "prices associated with a price-frequency mathematical distribution of competitor prices." By these unique features, an optimal price is generated that is more relevant to competitors, etc. Specifically, with respect to the claimed "number of competitors," for example, the significance of this omission in Phillips is clear when considering the following example. If a supplier determines the optimal price to sell their product is \$35.00 with a single competitor, the presence of twenty competitors would result in the supplier's optimal price being likely lower.

The Examiner is reminded that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Moreover, the identical invention must be shown in as complete detail as contained in the claim. *Richardson v. Suzuki Motor Co.* 868 F.2d 1226, 1236, 9USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

This criterion has simply not been met by the Phillips reference, since it fails to teach or suggest all of appellant's claim limitations, as noted above. To this end, the rejection should be withdrawn.

- 12 -

Group #2: Claim 2

The Examiner has relied on Figure 4 to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution includes a price-frequency mathematical curve." Appellant respectfully asserts that such figure is not a frequency distribution curve (count or frequency vs. variable), nor does it depict a price-frequency distribution of competitor prices. In fact, appellant notes that the description of FIG. 4 found in paragraph [0028], does not disclose any sort of a price-frequency mathematical distribution curve.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #3: Claim 3

The Examiner has relied on Figure 4 to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a highest frequency price." Appellant respectfully asserts that such figure does not teach appellant's specific claim language since Figure 4 does not show any sort of frequency in the manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #4: Claim 4

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a mean price." Appellant respectfully asserts that such figures and excerpts fail to even mention a mean price as claimed by appellant.

- 13 -

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #5: Claim 5

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a standard deviation low price." Appellant respectfully asserts that such figures and excerpts fail to even mention a standard deviation low price as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #6: Claim 6

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a standard deviation high price." Appellant respectfully asserts that such figures and excerpts fail to even mention a standard deviation high price as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #7: Claim 7

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a price associated with a beginning of the price-frequency mathematical distribution." Appellant

- 14 -

respectfully asserts that such figures and excerpts fail to even mention a price associated with a beginning of the price-frequency mathematical distribution as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #8: Claim 8

The Examiner has relied on Figures 3-5 and paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the plurality of prices include a price associated with an end of the price-frequency mathematical distribution." Appellant respectfully asserts that such figures and excerpts fail to even mention a price associated with an end of the price-frequency mathematical distribution as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #9: Claim 13

The Examiner has relied on paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed "receiving a sales and administration cost, utilizing the input device." Appellant respectfully asserts that Phillips makes no specific disclosure in paragraphs [0013], [0014] and [0018] of "a sales and administration cost" as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #10: Claim 14

- 15 -

The Examiner has relied on paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed technique "wherein the business objective includes maximizing earnings before income tax (EBIT) for the good or service." Appellant respectfully asserts that such excerpt fails to disclose any sort of maximizing earnings before income tax (EBIT) business object. In fact, after careful review of the entire Phillips reference, appellant notes that nowhere in such reference is there any disclosure of utilizing EBIT or earnings before income tax, and especially not in the manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #11: Claim 15

The Examiner has relied on Figures 2 and along with paragraphs [0013]-[0014] and [0018] to make a prior art showing of appellant's claimed technique "wherein the calculating is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine." Appellant respectfully asserts that such figures and excerpts fail to even mention utilizing a frequency distribution engine, a probability of win engine, an expected results engine as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #12: Claim 17

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant's claimed technique "wherein the calculating further includes adjusting the probability of a customer purchase based on the number of competitors." Appellant respectfully asserts that such figures and excerpts fail disclose adjusting the probability of a customer purchase, let alone based on the number of competitors, as claimed by appellant.

- 16 -

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #13: Claim 21

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant's claimed technique "wherein a graphical user interface is included for inputting the competitor prices and the number of competitors." Appellant respectfully asserts that such Figures only show a GUI, but not any sort of inputting of competitor prices and a number of competitors as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #14: Claim 22

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant's claimed technique "wherein the graphical user interface is adapted for inputting the business objective." Appellant respectfully asserts that such Figures only show a GUI, but not any sort of inputting a business objective as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #15: Claim 23

The Examiner has relied on paragraphs [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is used to estimate the

- 17 -

competitor prices.” Appellant respectfully asserts that such excerpts do not teach a price-frequency mathematical distribution, let alone where one is “used to estimate the competitor prices” as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

Group #16: Claim 24

The Examiner has relied on paragraphs [0052]-[0068] to make a prior art showing of appellant’s claimed technique “wherein the price-frequency distribution is estimated using the set of competitor prices.” Appellant respectfully asserts that such excerpts do not teach any sort of price-frequency mathematical distribution, let alone where one is “estimated using the set of competitor prices” as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

Group #17: Claim 25

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant’s claimed technique “wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors.” Appellant respectfully asserts that such excerpt does not teach a price-frequency mathematical distribution, and especially not one that is “converted to an expected probability of a customer purchase based on the number of competitors” as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

- 18 -

Group #18: Claim 26

The Examiner has relied on the tables in Figures 3-6 to make a prior art showing of appellant's claimed technique "wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution." Appellant respectfully asserts that the tables in FIG. 3 and 5 refer to the price that a product was sold by the company attempting to optimize the price and therefore by definition do not contain competitor prices, as does appellant's claim language when read in context.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #19: Claim 27

The Examiner has relied on paragraphs [0013]-[0014], [0018] and [0052]-[0068] to make a prior art showing of appellant's claimed technique "wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices." Appellant respectfully asserts that such specific claim language is not taught in such excerpts.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #20: Claim 28

The Examiner has relied on paragraph [0018] to make a prior art showing of appellant's claimed technique "wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration."

- 19 -

Appellant respectfully asserts that such excerpts fail to even mention any sort of factory utilization and market penetration as claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #21: Claim 29

The Examiner has relied on Figures 1-7 to make a prior art showing of appellant's claimed technique "wherein a set of the income/operational statements are stored within a table." Appellant respectfully asserts that such figures fail to show "a set of the income/operational statements" as claimed by appellant. Appellant further notes that the entire Phillips reference also fails to even suggest such specific claim language.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #22: Claim 30

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices." Appellant respectfully asserts that such excerpts fail to disclose "a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal" as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

- 20 -

Group #23: Claim 31

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein the optimal price satisfying the selected objectives is identified." Appellant respectfully asserts that appellant's claimed objectives are more expansive and comprehensive than those disclosed in Phillips, and that therefore Phillips does not allow for an "optimal price satisfying the selected objectives...[to be] identified" as claimed by appellant (emphasis added).

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #24: Claim 32

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices." Appellant respectfully asserts that such excerpts along with the entire Phillips reference fail to teach utilizing a "probability of a customer purchase," let alone in the specific manner claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

Group #25: Claim 33

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant's claimed technique "wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit,

- 21 -

factory utilization, and market penetration.” Appellant respectfully asserts that such excerpts along with the entire Phillips reference fail to teach “financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration” as specifically claimed by appellant.

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

Group #26: Claim 34

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant’s claimed technique “wherein a set of the income/operational statements are stored within a table.” Appellant respectfully asserts that such excerpts fail to meet such specific claim language since they do not even suggest a “set of the income/operational statements.”

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant’s specific claim language since it fails to teach or suggest all of appellant’s claim limitations, as noted above.

Group #27: Claim 35

The Examiner has relied on paragraphs [0031]-[0039] and [0076]-[0077] to make a prior art showing of appellant’s claimed technique “wherein a maximum revenue value , a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.” Appellant respectfully asserts that such excerpts fail to meet appellant’s specific claim language since they fail to disclose “a maximum revenue value , a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal” in the context claimed by appellant.

- 22 -

Again, appellant respectfully asserts that the Phillips reference does not anticipate appellant's specific claim language since it fails to teach or suggest all of appellant's claim limitations, as noted above.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

- 23 -

VIII CLAIMS APPENDIX (37 C.F.R. § 41.37(c)(1)(viii))

The text of the claims involved in the appeal (along with associated status information) is set forth below:

1. (Previously Presented) A computer-implemented method for determining an optimal price, comprising:
 - receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices, utilizing an input device of a computer system;
 - receiving a number of competitors, utilizing the input device of the computer system;
 - receiving a business objective which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service, utilizing the input device of the computer system;
 - receiving a cost associated with a good or service, utilizing the input device of the computer system;
 - calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with a good or service, utilizing a processor coupled to the input device of the computer system; and
 - outputting the optimal price for performing the business objective, utilizing an output device coupled to the processor of the computer system.
2. (Original) The method as recited in claim 1, wherein the price-frequency mathematical distribution includes a price-frequency mathematical curve.
3. (Original) The method as recited in claim 1, wherein the plurality of prices include a highest frequency price.
4. (Original) The method as recited in claim 1, wherein the plurality of prices include a mean price.

- 24 -

5. (Original) The method as recited in claim 1, wherein the plurality of prices include a standard deviation low price.
6. (Original) The method as recited in claim 1, wherein the plurality of prices include a standard deviation high price.
7. (Original) The method as recited in claim 1, wherein the plurality of prices include a price associated with a beginning of the price-frequency mathematical distribution.
8. (Original) The method as recited in claim 1, wherein the plurality of prices include a price associated with an end of the price-frequency mathematical distribution.
9. – 12. (Cancelled)
13. (Original) The method as recited in claim 1, and further comprising receiving a sales and administration cost, utilizing the input device.
14. (Original) The method as recited in claim 13, wherein the business objective includes maximizing earnings before income tax (EBIT) for the good or service.
15. (Original) The method as recited in claim 1, wherein the calculating is carried out utilizing a frequency distribution engine, a probability of win engine, an expected results engine.
16. (Cancelled)
17. (Previously Presented) The method as recited in claim 1, wherein the calculating further includes adjusting the probability of a customer purchase based on the number of competitors.
18. (Cancelled)
19. (Previously Presented) A computer program product embodied on a computer readable medium for determining an optimal price, comprising:

- 25 -

computer code for receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices;
computer code for receiving a number of competitors;
computer code for receiving a business objective which is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service;
computer code for receiving a cost associated with a good or service;
computer code for calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service; and
computer code for outputting the optimal price;
wherein the computer code is executed on a computer for aiding in the performance the business objective.

20. (Previously Presented) A system for determining an optimal price, comprising:
an input device for receiving a plurality of prices associated with a price-frequency mathematical distribution of competitor prices, a number of competitors, a business objective, and a cost associated with good or service, wherein the business objective is selected from the group consisting of maximizing revenue for the good or service, maximizing gross profit for the good or service, maximizing factory utilization for the good or service, achieving a market share goal for the good or service, and maximizing earnings before income tax (EBIT) for the good or service;
a processor including a plurality of engines, and coupled to the input device, the engines of the processor adapted for calculating an optimal price based on the prices, number of competitors, business objective, and cost associated with the good or service; and
a display device coupled to the processor for displaying the optimal price for performing the business objective.

21. (Previously Presented) A method as recited in claim 1, wherein a graphical user interface is included for inputting the competitor prices and the number of competitors.

- 26 -

22. (Previously Presented) A method as recited in claim 21, wherein the graphical user interface is adapted for inputting the business objective.
23. (Previously Presented) A method as recited in claim 22, wherein the price-frequency mathematical distribution is used to estimate the competitor prices.
24. (Previously Presented) The method as described in claim 22, wherein the price-frequency distribution is estimated using the set of competitor prices.
25. (Previously Presented) The method as described in claim 22, wherein the price-frequency mathematical distribution is converted to an expected probability of a customer purchase based on the number of competitors.
26. (Previously Presented) A method as recited in claim 22, wherein the price-frequency mathematical distribution is converted to a table of prices with a frequency of a price within the table corresponding to the price-frequency mathematical distribution.
27. (Previously Presented) A method as recited in claim 26, wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.
28. (Previously Presented) A method as recited in claim 27, wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration.
29. (Previously Presented) A method as recited in claim 28, wherein a set of the income/operational statements are stored within a table.
30. (Previously Presented) A method as recited in claim 29, wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.

- 27 -

31. (Previously Presented) The method as described in claim 30, wherein the optimal price satisfying the selected objectives is identified.
32. (Previously Presented) A method as recited in claim 17, wherein each price, probability of a customer purchase, and cost-per-unit are used to form an income/operational statement for each member of a plurality of prices.
33. (Previously Presented) A method as recited in claim 17, wherein each income/operational statement is comprised of financial and operational terms including revenue, cost-of-goods, gross profit, factory utilization, and market penetration.
34. (Previously Presented) A method as recited in claim 17, wherein a set of the income/operational statements are stored within a table.
35. (Previously Presented) A method as recited in claim 32, wherein a maximum revenue value, a maximum profit value, a plurality of factory utilization values, and the market penetration value corresponding to a market penetration goal are identified along with corresponding prices.
36. (Previously Presented) The method as described in claim 35, wherein the optimal price satisfying the selected objectives is identified.

- 28 -

IX EVIDENCE APPENDIX (37 C.F.R. § 41.37(c)(1)(ix))

There is no such evidence.

- 29 -

X RELATED PROCEEDING APPENDIX (37 C.F.R. § 41.37(c)(1)(x))

Since no decision(s) has been rendered in such proceeding(s), no material is included in this Related Proceedings Appendix.

- 30 -

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. ABE1P001).

Respectfully submitted,

By: 

Kevin J. Zilka

Reg. No. 41,429

Date: 8/31/06

Zilka-Kotab, P.C.

P.O. Box 721120

San Jose, California 95172-1120

Telephone: (408) 971-2573

Facsimile: (408) 971-4660

AUG. 31. 2006 2:13PM ZILKA-KOTAB, PC

RECEIVED
CENTRAL FAX CENTER

AUG 31 2006

NO. 4026 P. 36



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1459
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,949	08/19/2003	John R. Abe	ABEIP001	6802
28875	7590	08/07/2006	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			ART UNIT	PAPER NUMBER

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/644,949	Applicant(s) ABE, JOHN R.	
	Examiner Thomas A. Dixon	Art Unit 3639	


-The MAILING DATE of this communication appears on the cover sheet with the correspondence address-

The Appeal Brief filed on 17 April 2006 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☒ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (Including any explanation in support of the above items):

Applicant's summary of claimed subject matter is generally addressed to the group of independent claims. Claims 1 and 19 appear to have the same features, but claim 20 has fewer features. The summary gives general citations to figures 2 and 13 and pages 19-20, but does not provide a concise explanation of each claimed feature of each independent claim and a precise support for each feature.


 Thomas A. Dixon
 Primary Examiner
 Art Unit: 3639